

STATE OF MISSOURI  
MISSOURI BOARD OF PHARMACY

IN RE:	)	
	)	
FRANK J. NUBER, R.PH.	)	
License No. 028056	)	Complaint No. 2016-07133
48 Autumn Woods Lane	)	
Troy, MO 63379	)	

**SETTLEMENT AGREEMENT BETWEEN**  
**THE MISSOURI BOARD OF PHARMACY AND FRANK J. NUBER**

Come now Frank J. Nuber, R. Ph. ("Respondent" or "Licensee") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Respondent's license to practice pharmacy will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Respondent knowingly

and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to him.

Respondent acknowledges that he has received a copy of the draft Complaint to be filed with the Administrative Hearing Commission, the investigative report, and other documents relied upon by the Board in determining there was cause for discipline against Respondent's license.

For the purpose of settling this dispute, Respondent stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Respondent's license to practice pharmacy, numbered 028056, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo.

#### **JOINT STIPULATION OF FACTS**

1. The Board is an agency of the State of Missouri created and established pursuant to Section 338.140, RSMo<sup>1</sup>, for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Frank J. Nuber ("Respondent") is licensed as a pharmacist under the laws of the State of Missouri, License No. 028056. Respondent's license was at all times relevant herein current and active.

3. At all times relevant herein, Respondent was employed as a pharmacist and served as the pharmacist-in-charge (the "PIC") for Medicine Shoppe, 505 Salt Lick Rd., St. Peters, MO 63376 (the "Pharmacy").

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri 2016 as amended unless otherwise indicated.

4. On or about August 15, 2016, the Board office received a phone call from an unknown caller with regard to the Respondent's daughter working at the Pharmacy and persons in the Pharmacy running out the back door during an "inspection."

5. On or about December 13, 2016, Board Inspectors Dan Vandersand and Joe Dino visited the Pharmacy. Cassandra D. Sierawski ("Sierawski") was present at the Pharmacy.

6. Sierawski is Respondent's daughter.

7. According to § 324.010, RSMo (HB 600):

All governmental entities issuing professional licenses, certificates, registrations, or permits pursuant to sections 209.319 to 209.339, sections 214.270 to 214.516, sections 256.010 to 256.453, section 375.014, sections 436.005 to 436.071, and chapter 317 and chapters 324 to 346 shall provide the director of revenue with the name and Social Security number of each applicant for licensure with or licensee of such entities within one month of the date the application is filed or at least one month prior to the anticipated renewal of a licensee's license. If such licensee is delinquent on any state taxes or has failed to file state income tax returns in the last three years, the director shall then send notice to each such entity and licensee. In the case of such delinquency or failure to file, the licensee's license shall be suspended within ninety days after notice of such delinquency or failure to file, unless the director of revenue verifies that such delinquency or failure has been remedied or arrangements have been made to achieve such remedy. The director of revenue shall, within ten business days of notification to the governmental entity issuing the professional license that the delinquency has been remedied or arrangements have been made to remedy such delinquency, send written notification to the licensee that the delinquency has been remedied. Tax liability paid in protest or reasonably founded disputes with such liability shall be considered paid for the purposes of this section.

8. Sierawski's pharmacy technician registration was suspended on October 12, 2010, for delinquency on state taxes or failure to file state income tax returns.

9. Sierawski had been working at the Pharmacy since the suspension date.

10. Her duties at the Pharmacy included weighing, measuring, and mixing ingredients for compounding prescriptions.

11. Respondent knew that Sierawski working at the Pharmacy under a suspended registration was "not right."

12. On December 4, 2016, Cassandra D. Sierawski was married and changed her name to Cassandra D. Petty.

13. Sierawski submitted a pharmacy technician application to the Board on or about December 29, 2016.

14. The Missouri Department of Revenue advised the Board that as of December 29, 2016, Sierawski was "not compliant" with the requirements of § 324.010, RSMo (HB 600).

15. In January 2017, the Board added Sierawski to the five-year employment disqualification list for submitting a forged Satisfaction of Certificate of Lien to the Missouri Department of Revenue.

16. Pursuant to § 338.013.1, RSMo:

1. Any person desiring to assist a pharmacist in the practice of pharmacy as defined in this chapter shall apply to the board of pharmacy for registration as a pharmacy technician. Such applicant shall be, at a minimum, legal working age and shall forward to the board the appropriate fee and written application on a form provided by the board. Such registration shall be the sole authorization permitted to allow persons to assist licensed pharmacists in the practice of pharmacy as defined in this chapter.

17. Missouri law further provides:

(1) A pharmacy technician is defined as any person who assumes a supportive role under the direct supervision and responsibility of a pharmacist and who is utilized according to written standards of the employer or the pharmacist-in-charge to perform routine functions that do not require the use of professional judgement in connection with the receiving, preparing, compounding, distribution, or dispensing of medications.

(A) No person shall assume the role of a pharmacy technician without first registering with the board in accordance with the requirements in section 338.013, RSMo and this rule. Nothing in this rule shall preclude the use of persons as pharmacy technicians on a temporary basis as long as the individual(s) is registered as or has applied to the board for registration as a technician in accordance with 338.013.1 and .2, RSMo.

20 CSR § 2220-2.700(1)(A).

18. Sierawski violated § 338.013.1, RSMo, and 20 CSR § 2220-2.700(1)(A) by working as a pharmacy technician at the Pharmacy without a valid pharmacy technician registration.

#### PIC Violations

19. As PIC, Respondent is charged with responsibility to ensure that the Pharmacy is operated in full compliance of all state and federal laws and regulations concerning the practice of pharmacy pursuant to § 338.210.5, RSMo, which states:

5. If a violation of this chapter or other relevant law occurs in connection with or adjunct to the preparation or dispensing of a prescription or drug order, any permit holder or pharmacist-in-charge at any facility participating in the preparation, dispensing, or distribution of a prescription or drug order may be deemed liable for such violation.

20. As pharmacist-in-charge, Respondent's failure to assure full compliance with state and federal pharmacy laws and regulations is in violation of 20 CSR § 2220-2.090(2)(B), (N), (O), (P), (W), (BB), and (DD), which states, in pertinent part:

(2) The responsibilities of a pharmacist-in-charge, at a minimum, will include:

\* \* \*

(B) The traffic in the prescription area must be restricted to authorized personnel only so that proper control over the drugs can be maintained at all times;

\* \* \*

(N) The pharmacist-in-charge will be responsible for the supervision of all pharmacy personnel, to assure full compliance with the pharmacy laws of Missouri;

(O) All Missouri and federal licenses are kept up-to-date;

(P) Policies and procedures are in force to insure safety for the public concerning any action by pharmacy staff members or within the pharmacy physical plant;

\* \* \*

(W) Assure full compliance with all state and federal drug laws and rules;

\* \* \*

(BB) Maintain a current list of all personnel employed by the pharmacy as pharmacy technicians. The list shall include the name, registration number or a copy of an application for registration that has been submitted to the board and a description of duties to be performed by each person contained on the list;

\* \* \*

(DD) Any person other than a pharmacist or permit holder who has independent access to legend drug stock on a routine basis in a pharmacy shall be required to register with the board as a pharmacy technician. The determination of whether or not an individual must register as a pharmacy technician will be the responsibility of the pharmacist-in-charge;

#### **JOINT CONCLUSIONS OF LAW**

21. Respondent's conduct is cause for disciplinary action against his license to practice pharmacy under § 338.055.2(5), (6), (10), and (13), RSMo, which provides:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

\* \* \*

(5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

\* \* \*

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter who is not registered and currently eligible to practice under this chapter;

\* \* \*

(13) Violation of any professional trust or confidence.

### **JOINT AGREED DISCIPLINARY ORDER**

A. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of §621.045.4(3), RSMo. Respondent's pharmacist license, number 028056 shall be placed on **PROBATION for a period of ONE (1) YEAR** ("disciplinary period"). The terms of discipline shall be:

**The following terms apply for the entire disciplinary period.**

1. Respondent shall comply with all applicable provisions of Chapter 338, Chapter 195, Chapter 196 and all applicable federal and state pharmacy/drug laws and regulations and all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.
2. Respondent shall not serve as pharmacist-in-charge or manager-in-charge of any entity licensed or regulated by the Board, or as a preceptor for pharmacy interns or as a teaching member of any school or college of pharmacy. Additionally, Respondent shall not serve as a consultant required by a Board disciplinary order for any pharmacy/drug distributor.
3. Respondent shall keep the Board apprised of his current home, electronic mail (e-mail) and work addresses and telephone numbers. Respondent shall notify the Board of any change in Respondent's employer or Respondent's home or work address within ten (10) days of such change in a manner approved by the Board. For employer/work changes, Respondent's notification shall include the reasons for the change. If at any time Respondent is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes of work location she must

provide the Board a list of locations worked if requested by the Board or Board's representative.

4. If Respondent's license expires or becomes void/invalid, upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of discipline not previously satisfied, including any remaining suspension/probationary period.
5. Respondent shall cooperate with the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of this Settlement Agreement. Respondent shall make himself available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings shall be at the Board's discretion and may occur periodically during the disciplinary period.
6. Respondent shall respond to any written inquiry of the Board and provide any requested documentation/records within three (3) days of receipt of a written request from the Board or the Board's authorized designee, or as otherwise requested by the Board/Board designee.
7. If requested by the Board, Respondent shall submit to a criminal history background check via the Board's approved vendor at Respondent's cost. Unless otherwise directed by the Board, Respondent shall submit the required fingerprints and undergo the requested criminal history background check within ten (10) days of the Board's request.
8. Respondent shall submit to any drug, alcohol or urinalysis testing requested by the Board, at Respondent's cost. Testing may be conducted on any human sample, including, but not necessarily limited to, urine, blood, breath, hair, nails, skin or saliva. The timing, manner and scheduling for testing is within the Board's sole discretion.
9. Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:
  - a. Any arrest or issuance of a criminal complaint;
  - b. Any municipal/local arrest, citation or complaint relating to drugs, theft, shoplifting, burglary, possession of drug paraphernalia, driving or operating a motor vehicle under the influence/while intoxicated or illegally possessing, selling or purchasing alcohol, any drug or drug paraphernalia;
  - c. A finding or plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment, including, but not limited to, any deferred or diverted adjudication, order or agreement;
  - d. A conviction of any crime, including, but not limited to, any Suspended Imposition of Sentence ("SIS") or Suspended Execution of Sentence ("SES");
  - e. A finding by a court that Respondent has violated any term of her criminal probation/parole;



- f. Any discipline, citation, or other administrative action filed or taken against Respondent by any state board/committee of pharmacy, or any other state or federal agency.

Failure to timely report any of the foregoing occurrences shall be considered a disciplinary violation.

- 10. If Respondent is currently or begins serving any period of criminal probation/parole, Respondent shall provide the name of his probation/parole officer to the Board, in writing, within ten (10) days of the effective date of this Agreement or within ten (10) days of the designation of a probation/parole officer. If Respondent's probation/parole officer is changed for any reason, Respondent shall submit the name of the replacement officer to the Board within ten (10) days of the change/modification. Respondent shall execute a release authorizing his probation or parole officer to provide to the Board any information relating to Respondent's probation or parole. Respondent shall maintain the release in effect and shall provide an updated release if requested by the Board.
- 11. Respondent shall file a "Disciplinary Compliance Report" with the Board in a form/manner approved by the Board. The Disciplinary Compliance Report shall be due by January 1 and July 1 of each calendar year. Respondent's final Disciplinary Compliance Report shall be filed no later than ninety (90) days before the end of the probationary period.
- 12. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this Agreement.
- 13. The parties to this Agreement understand that the Board of Pharmacy will maintain this Agreement as an open record of the Board as provided in Chapters 324, 338, 610, RSMo.

#### **NOTICE TO EMPLOYERS**

- 14. If applicable, Respondent shall notify any employer of the employer's need to apply for and receive the necessary state (misdemeanor/felony) and federal (felony) waivers from the Bureau of Narcotics and Dangerous Drugs and the Drug Enforcement Administration in order to be employed within a facility that maintains state or federal registrations for the purpose of storing, distributing or dispensing controlled substances.
- 15. Except as otherwise provided herein, "Employment" within the meaning of this Agreement shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license, pharmacy intern license or pharmacy technician registration is a requirement or criterion for employment, regardless of whether Respondent is an employee, independent contractor, volunteer, instructor or consultant. "Employment" shall also include any entity where legend drugs are stored, sold, dispensed or distributed.

16. Respondent shall notify any current or future employers of this action by providing a copy of this Settlement Agreement to the pharmacist-in-charge or manager-in-charge of any pharmacy or drug distributorship where Respondent is employed, on or before the effective date of discipline or prior to accepting any offer of employment.
  - a. If Respondent is not or will not be employed by a pharmacy or drug distributor, the notice shall be provided to Respondent's direct supervisor at Respondent's current/prospective place of employment, as defined herein, within the timeframes required by this section.
  - b. For purposes of this Agreement, a pharmacy shall also include, but is not limited to, any location providing pharmacy services for inpatients of a licensed hospital or residents of a long term care facility.
17. Respondent shall cause the pharmacist-in-charge, manager-in-charge or supervisor to sign a written acknowledgment on a form approved by the Board indicating that he/she has received and reviewed the Settlement Agreement and the terms and conditions imposed thereby. The written acknowledgement shall be signed and dated by the applicable pharmacist-in-charge, manager-in-charge or supervisor and shall be submitted to the Board by Respondent for verification within ten (10) days of the dated signature. Respondent shall be responsible for ensuring the required signed acknowledgments are timely submitted to the Board.
18. If at any time Respondent is employed by a temporary employment agency, Respondent must provide each employment agency a copy of this Settlement Agreement prior to being assigned to a temporary employment site. Respondent shall also provide a copy of the Settlement Agreement to each pharmacist-in-charge or manager-in-charge of each pharmacy or drug distributor where Respondent is assigned to work. If the pharmacist-in-charge or manager-in-charge is not present at the employment site, a copy of the Settlement Agreement shall be left at the applicable site for the pharmacist-in-charge/manager-in-charge to review. Respondent shall provide an accurate listing of all employment/work sites where Respondent has been assigned if requested by the Board or the Board's authorized designee.
19. Licensee shall execute any release or provide any authorization necessary for the Board to obtain records of Respondent's employment during the period covered by this Settlement Agreement.

#### **CONTINUING EDUCATION**

20. Within three (3) months of the effective date of this Settlement Agreement, Respondent shall take and pass the Board approved Pharmacy Practice Guide Continuing Education Examination, if available. Respondent shall register and complete the required examination via the Board's website or as otherwise requested by the Board.

21. Respondent shall take a minimum of 6.0 continuing education (0.60 CEUs) hours in pharmacy law during each biennial pharmacist renewal period that is completed while Respondent is on discipline. The continuing education required by this section shall comply with 20 CSR 2220-7.080 and may be used to satisfy the licensee's biennial continuing education requirement. Proof of compliance with the continuing education requirements of this section shall be submitted to the Board on or before October 31<sup>st</sup> of each biennial pharmacist renewal period.

B. Upon the expiration of said discipline, Respondent's license as a pharmacist in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Respondent has violated any term or condition of this Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Respondent.

C. If the Board determines that Respondent has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

D. No order shall be entered by the Board pursuant to the preceding paragraph of this Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

E. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

F. Respondent, together with his heirs and assigns, and his attorneys, do hereby waive and release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

**RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE  
LINE,**

<u>          </u>	<b>REQUESTS</b>
<u>          </u>	<b>DOES NOT REQUEST</b>

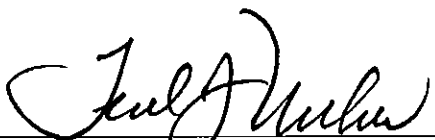
**THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS  
SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S  
LICENSE.**

If Respondent has requested review, Respondent and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Respondent's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Respondent's license. Effective fifteen (15) days from the date the Administrative Hearing Commission determines that the Settlement Agreement sets forth cause for disciplining Respondent's license, the agreed upon discipline set forth herein shall go into effect.

If Respondent has not requested review by the Administrative Hearing Commission, the Settlement Agreement goes into effect fifteen (15) days after the document is signed by the Board's Executive Director.

RESPONDENT

FRANK J. NUBER




Frank J. Nuber

Date: 11-08-2017

PETITIONER

MISSOURI BOARD OF  
PHARMACY

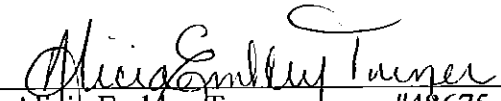
By:

  
Kimberly Grinston  
Executive Director

Date: 11-16-17

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